

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

JUN 30 2010

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
BY RICHARD K. JONES, CLERK
DEPUTY CLERK

MARKYL LEE aka MARKYL ANGEL LEE,
an individual and PROMISES TO KEEP,
LLC, a Florida limited liability company,

Plaintiffs,

ORDER ADOPTING REPORT &
RECOMMENDATION

vs.

MAX INTERNATIONAL, LLC, a Utah
limited liability company,

Defendant,

Case No.2:09-cv-175

Before the court is the Report and Recommendation issued on May 4, 2010 by United States Magistrate Judge Brooke Wells, recommending that the plaintiffs' case be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 37. The plaintiffs object to this recommendation and filed papers to this effect on May 14, 2008. The defendant responded on May 28, 2010, arguing that the magistrate judge's recommendation should be followed. The court, having reviewed all relevant materials, including the reasoning set forth in the magistrate judge's Report and Recommendation and the parties' written arguments, concludes that oral argument is not necessary and enters the following order. See DUCivR 7-1(f).

As described in the magistrate judge's order, the plaintiffs have repeatedly failed to

follow the magistrate judge's discovery orders. The parties in this case have been embroiled in a discovery dispute that began in August 2009. The magistrate judge twice ordered the plaintiff to produce various discovery, including state tax documentation. In the January 12, 2010 order, the magistrate judge warned that failure to comply would result in dismissal of the action. Yet, the plaintiff still failed to comply with all orders in that ruling.

Considering the plaintiffs repeated failures to comply, the magistrate judge properly applied the *Ehrenhaus* factors, *see* 965 F.2d 916, 921 (10th Cir. 1992), and concluded that the plaintiffs' failure to comply with the court's discovery order prejudiced the defendant, interfered with the judicial process, occurred after a warning that dismissal would occur, and that a lesser sanction would not be appropriate. The court agrees with this reasoning and hereby ADOPTS the magistrate judge's Recommendation and DISMISSES the plaintiffs' case with prejudice.

IT IS SO ORDERED.

Dated this 29th day of June, 2010.

BY THE COURT



Dee Benson
United States District Court Judge